IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7547 of 1996

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KANAIYALAL NARANDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AY KOGJE for Petitioner

MR DA BAMBHANIA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

SERVED for Respondent No. 3

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 10/09/97

ORAL JUDGEMENT

This petition is brought by the petitioner in representative capacity on behalf of all the employees including the teaching and nonteaching staff of the Non Government Grant in Aid Secondary Schools. Be it noted

that though the petitioner has brought this petition under Order 1, Rule 8 of the Code of Civil Procedure, 1908, the petitioner has not prayed for permission to bring the petition in representative capacity nor has he sought any permission for bringing the petition in a representative capacity. This petition, therefore, cannot be treated as one filed in the representative capacity. Petition is, therefore, restricted to the petitioner alone.

2. The petitioner is an employee of the non-government grant in aid school and challenges the decision of the Government in respect of encashment of Leave travel Concession benefit payable to the employees of the non-government grant in aid secondary schools.

3. The leave travel concession [hereinafter, for the sdake of bravity, referred to as "the LTC"] is ordinarily paid to the Government servants under the relevant rules for the journeys actually undertaken by them. Said benefit has also been extended to the employees of the non government grant in aid schools by various government decisions. It appears that under the Government Resolution dated 27th June 1984, the Government has liberalized its Scheme for LTC. Instead of giving benefit of LTC for the journeys actually undertaken by the Government servants, benefit of LTC was permitted to be claimed in cash even if the journey is not actually undertaken by the Goveornment servant concerned i.e. even without undertaking the actual journey, the Government servant would be entitled toclaim the LTC equivalent to railway fare for stipulated distance and for stipulated number of persons. Ordinarily, LTC Benefit is available to an employee concerned during the block of period of four years. The policy decision of the Government in respect of the grant of LTC benefits for the block period of 1992-95 is incorporated in the Government Resolution dated 1st July, 1991.Under the said resolution, an employee is entitled to claim LTC for travelling to his native place once in a block period of two years. In the alternative, an employee may undertake a journey to any place in India upto the distance of 3000 kms. during one of the two block periods of two years each and may claim the actual fare paid by him for himself and the members of the family. However, in the block period in which the employee undertakes such journey, he would not be entitled to LTC for travel to his native place. Thus, an employee may travel to his native place once in each block period of two years and may claim the LTC for such journey. However, once in two block periods,instead of travelling to his native place,

he may travel to any place in India within the stipulated limit and may claim the amount of fare paid by him. It is further resolved that in case of an employee not undertaking the actual journey anywhere in India as afore said may still claim LTC which is known as encashment of the LTC.The encashment of theLTC has been restricted to to and fro journey upto 4500 kms. and upto four full tickets. The Government has issued a further resolution on lst January, 1992. Said resolution is issued in respect of encashment of the LTC for the block period of 1992-95. Clause (7) of the said resolution provides that the encashment of the LTC would not be available to the employees who have entered into service after lst April, 1989 and who have more than two living children.

It is this resolution which is the subject matter of challenge in this petition. The petitioner has claimed that the petitioner has entered into service after lst April, 1989. The petitioner has contended that the above referred condition provided in the said resolution is arbitrary and discriminatory inasmuch as a class of people i.e. employees serving in the secondary schools is further classified in the groups and are meted with different treatment i.e. the employees who have entered into service before lst April, l989 are entitled to benefit of encashment of LTC irrespective of the fact that theymay have more than two children while the employees entering in service after lst April, l989 are deprived of this benefit merely on the ground that they have more than two children. It is further contended that the said resolution cannot be given retrospective effect and the same can apply only to the employees entering the service after the date of issuance of the said resolution.

I do not find any substance in either of the contentions. The Government has power to take a police decision and give it retrospective effect. Ordinarily, the Government resolution in absence of any specific provision to that effect shall take effect from the date of its issuance. In the present case,however, the decision contained in the impugned resolution dated lst January, 1992 cannot be said to have been given retrospective effect. The resolution pertains to the LTC admissible for block period of 1992-95 and applies to all the servants who are otherwise entitle to the LTC for the said block period. One must bear in mind that no Government servant or a servant of a Secondary School has either a fundamental or a statutory right to receive

encashment of the LTC. Such encashment is permitted by an executive instructions contained in the Government Resolution dated 27th June, 1984. The Government, therefore, has a right to impose any just or reasonable condition for grant of the benefit of encashment of LTC.

In so far as the discrimination amongst the employees is concerned, the aforesaid resolution undoubtedly divides the employees into two groups namely those who have entered the service prior to lst April, l989 and those who have entered service after 1st April, 1989. It is apparent that the impugned policy decision has been taken in furtherance of the Government policy of family planning and as a population check. If the Government intends to effectively implement the scheme of family planning and to impose a population check, it is absolutely necessary for the Government to provide for such checks and to discourage raising of large families. I am, therefore, of the view that the impugned policy decision of the Government can neither be said tobe discriminatory nor arbitrary. If the Government has chosen to impose condition in respect of only those servants who have entered the service after lst April, 1989, the same also cannot be said tobe discriminatory. The Government may choose not to impose such condition on those servants who have been in service for a long time. I, therefore, do not find the impugned Resolution tobe arbitriary or discriminatory as alleged.

It appears that in furtherance of the said resolution, the District Education Officer has issued a circular to the principals of the secondary and higher secondary schools inviting options from the employees of the secondary schools for LTC for the block period of 1992-95. In the said circular, in clause (6), it is mentioned that the employees entering the service after lst April, 1989 shall be entitled to LTC maximum for two living children. I find that the District Education Officer has grossly misinterpreted the impugned Government Resolution dated lst January, 1992.What should prevail is the impugned resolution dated 1st January, 1992 and not a Circular issued by the District Education Officer pursuant to the impugned resolution. The petitioner is right inasmuch as he has claimed that the circular issued by the District Education Officer has raised an anomaly in the interpretation and implementation of the impugned resolution dated 1st January, 1992. In that view of the matter, clause (6) of

the Circular dated 1/6th March , 1995 issued by the District Education Officer is quashed and set aside.The District Education Officer is directed to issue proper instructions in consonance with the Government Resolution dated 1st January, 12992 to all the Principals of the Secondary and Higher Secondary Schools. Subject to the aforesaid directions, petition is dismissed. Rule is discharged. Notice is discharged. There shall be no order as to costs. Registry is directed to send the writ of this order forthwith.

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Vyas